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| 09/698,526 | 10/26/2000 | Dan Vassilovski | 990301 | 6563 |

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| EXAMINER | |
|---|---|
| WOOD, WILLIAM H | |
| **ART UNIT** | **PAPER NUMBER** |
| 2124 | 7 |

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. 09/698,526 | Applicant(s) VASSILOVSKI ET AL. | |
|---|---|---|---|
| | Examiner William H. Wood | Art Unit 2124 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *22 October 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

Claims 1-20 are pending and have been examined.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 2-3, 5-6, 10-11, 13-14, 18 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by **Shaw** (USPN 6,381,741).

*Claim 2*

**Shaw** disclosed a method for configuration management for a computing device *(Abstract)*, comprising:

- providing available software to be loaded into said computing device to said computing device through an interface *(Figure 1, elements 50 and 70; column 2, lines 58-67; column 1, line 65 to column 2, line 10)*;
- determining whether or not resident software stored in a storage device associated with said computing device is authenticated *(column 3, lines 40-65; Figure 2)*;
- determining whether or not said available software is authenticated *(column 4, line 6 to column 7, line 46)*;
- rejecting said available software if said resident software is authenticated and said available software is not authenticated *(column 3, line 66 to column 4, line 3; column 5, lines 34-41)*; and
- loading said available software if said resident software is authenticated and said available software is authenticated *(column 3, line 58-65; Figure 2; forced update)*.

*Claim 3*

**Shaw** disclosed the method of claim 2 (as discussed above) wherein said determining whether or not said resident software is authenticated comprises:

- determining whether or not an authentication flag has been set *(column 3, lines 45-57)*;
- wherein said resident software is determined to be authenticated if said authentication flag has been set *(column 3, lines 48-50)*; otherwise

- said resident software is determined to be unauthenticated *(column 3, lines 48-50)*.

*Claim 5*

**Shaw** disclosed the method of claim 3 wherein said authentication flag is set by a service technician *(column 3, lines 55-65)*.

*Claim 6*

**Shaw** disclosed the method of claim 2 wherein said determining whether or not said resident software is authenticated comprises of performing a direct authentication procedure on said resident software *(column 3, line 66 to column 4, line 5)*.

*Claims 10-11 and 13-14*

Apparatus claims 10-11 and 13-14 correspond to method claims 2-3 and 5-6 and as such are rejected in the same manner.

*Claims 18 and 20*

Claims 18 and 20 correspond to claim 2 and as such are rejected in the same manner.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 4, 9, 12, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Shaw** (USPN 6,381,741).

*Claim 1*

**Shaw** disclosed a method for configuration management for a computing device *(Abstract)*, comprising:

- providing available software to be loaded into said computing device to said computing device through an interface *(Figure 1, elements 50 and 70; column 2, lines 58-67; column 1, line 65 to column 2, line 10)*;
- determining whether or not resident software stored in a storage device associated with said computing device is authenticated *(column 3, lines 40-65; Figure 2)*;
- determining whether or not said available software is authenticated *(column 4, line 6 to column 7, line 46)*;
- loading said available software into said storage device if said resident software has not been authenticated *(column 3, lines 30-44; column 3, lines 38-40)*;

**Shaw** did not explicitly state setting an authentication flag if said available software is authenticated. **Shaw** demonstrated that it was known at the time of invention to make use of flag indicators (column 3, lines 45-57; and column 4, line 45) and **Shaw** (as

shown above) clearly demonstrates authenticating available code segments. It would have been obvious to one of ordinary skill in the art at the time of invention to implement the system of **Shaw** with a method of recording available code is authenticated (a flag) as found in **Shaw**'s teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to make use of a common method/device (flag) of communicating/recording information (in this case is or isn't code authenticated).

*Claim 4*

**Shaw** disclosed the method of claim 3 wherein said authentication flag is set when said available software is determined to be authenticated *(as above under claim 1)*.

*Claims 9, 17 and 19*

Claims 9, 17 and 19 correspond to claim 1 and as such are rejected in the same manner.

*Claim 12*

Apparatus claim 12 corresponds to method claim 1 and as such is rejected in the same manner.

5. Claims 7-8 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Shaw** (USPN 6,381,741) in view of admitted prior art (herein referred to as **APA**).

*Claims 7 and 8*

**Shaw** disclosed the method of claim 6 (as discussed above). **Shaw** did not explicitly state: wherein said direct authentication procedure comprises performing a cyclic redundancy check; or wherein said direct authentication procedure comprises performing a secure hashing algorithm. **APA** demonstrated that it was known at the time of invention to utilize cyclic redundancy check, CRC (Specification, page 5, lines 24-35) and secure hashing algorithms, SHA (Specification, page 5, lines 24-35). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teachings of **APA** into the system and method of **Shaw**. This implementation would have been obvious because one of ordinary skill in the art would be motivated to perform well-known authentication techniques to determine when an update was necessary in order to improve the performance of a computing system.

*Claims 15 and 16*

Apparatus claims 15 and 16 correspond to method claims 7 and 8 and as such are rejected in the same manner.

***Response to Arguments***

6. Rejection of claim 4 under 35 U.S.C. 112 of the previous rejection is withdrawn.

7. Applicant's arguments filed 10 October 2003 have been fully considered but they are not persuasive. Applicant argued: **Shaw** does not disclose: [i] determining authenticity for *available* software; [ii] setting an authentication flag for available software;

and [iii] rejecting and loading available software based upon authenticity. Each of these points is addressed in the above amended rejection to claims 1-20. Most importantly it is noted that **Shaw** authenticates both resident and available software (column 3, lines 30-54; column 4, lines 7-33; column 5, lines 34-46). These issues are believed to clarify all of Applicant's concerns and as such the claims remain rejected under the cited prior art.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

## *Correspondence Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (703)305-3305. The examiner can normally be reached 7:30am - 5:00pm Monday thru Thursday and 7:30am - 4:00pm every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703)305-9662. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-7239 for regular communications and (703)746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

William H. Wood
January 7, 2004

KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100